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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,384	02/01/2001	Guido Maurizio Oliva	3572-27	3979
23117	7590	06/16/2004	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			KJM, AHSHIK	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/773,384	OLIVA, GUIDO MAURIZIO	
	Examiner	Art Unit	
	Ahshik Kim	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Amendment

1. Receipt is acknowledged of the amendment filed on March 17, 2004. In the amendment
5 claims 1, 7, 9, 16-18, 20, 21, 26, 28, and 35-37 were amended. Currently, claims 1-37 remain for
examination.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers
10 have been placed of record in the file.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the
basis for the rejections under this section made in this Office action:

15 A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign
country or in public use or on sale in this country, more than one year prior to the date of
application for patent in the United States.

- 20 4. Claims 1-17 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Metlitsky
et al. (US 5,233,170, hereinafter “Metlitsky”, previously cited).

Re claims 1-17 and 35, Metlitsky et al. disclose an optical device for emitting a laser light
beam comprising a source of a laser light beam including a package 10 and means 22 for
generating the laser light beam housed within the package 10, the package 10 being provided

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with a laser light beam emission window 14 (fig. 1; col. 4, line 40 through col. 5, line 23) defining an aperture having a Fresnel focusing lens 200, which serves as a diaphragm (figs. 9 & 10; col. 8, lines 49+) which selects a central portion of the laser light beam and is directly associated to/housed in the package 10 at the laser light beam emission window 14; a photodiode 28 and collecting lens 38 serves as photo-detecting/receiving means to collect a luminous signal diffused by the illuminated optical code and generate an electrical signal and a processing means 50 (col. 5, line 34 through col. 6, line 40; col. 7, lines 28+; especially col. 6, lines 18-40).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

6. Claims 18-34, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metlitsky (US 5,233,170) in view of Gurevich et al. (US 5,969,323, hereinafter "Gurevich", previously cited). The teachings of Metlitsky have been discussed above.

Metlitsky fails to specifically teach or fairly suggest that light emitting source and light receiving device is optically separated.

Gurevich teaches an optical reader wherein light sources such as laser diode 3 and light sensor 8 are optically separated (see figure 1; col. 4, lines 54+).

In view of Gurevich's teaching, it would have been obvious to an ordinary skill in the art at the time the invention was made to incorporate a scanner structure wherein outgoing beam and reflected beams do not meet in order to capture correct images without noise and therefore reduce errors resulting from such noise. Although Gurevich does not provide a structural barrier
5 between light source and light receptor, outgoing beams and reflected beams, as shown in figure 1, do not overlap, reading on the subject matter disclosed in 18, 36, and 37. As disclosed in other references, separating outgoing beam and incoming beams is a well-known method and widely used in optical reader. Accordingly, incorporating such feature is well within the ordinary skill in the art, and therefore an obvious expedient.

10

Response to Arguments

7. The Applicant's amended claims and arguments filed on March 17, 2004 have been carefully reviewed and considered. However, for the reasons stated below, it is the Examiners' view that the Metlitsky patent, and combination of Metlitsky and Gurevich disclose the claimed
15 subject matter disclosed in the instant application.

As indicated in previous Office Action, Metlitsky discloses a package 10 comprising a diaphragm 200. As further shown in the figures 3-6, items 38, 36, and 34 can be considered a diaphragm.

20 In the remarks (page 10 under CLAIMS 1-17, 35), the Applicant asserts that either the lens 200 or the items 38, 36, and 34 are not considered a diaphragm. However, the claim 5 of the instant application states "The device according to claim 1, wherein said laser light beam emission window is shaped to serve as the diaphragm." To the extent that a light beam emission

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window can serve as a diaphragm, lens 200 or items 38, 36 and 34 of the Metlitsky patent can provide the functions of a diaphragm.

Applicant's amended claims and remarks explaining the Applicant's position have been given a careful consideration. However, for the reasons stated above, the cited references, taken
5 alone or in combination, teach claimed subject matter in the instant application. Accordingly, this Office Action is made final.

Conclusion

10 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after
15 the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahshik Kim whose telephone number is (571)272-2393. The examiner can normally be reached between the hours of 6:00AM to 3:00PM Monday thru Friday. The fax number directly to the Examiner is (571)273-2393.

5 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571)272-2398. The fax phone number for this Group is (703)872-9306.

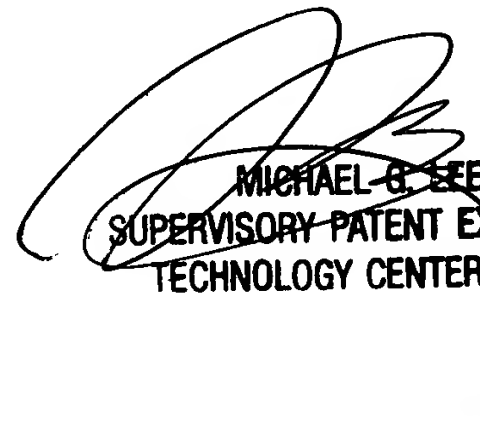
10 Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [ahshik.kim@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

15 Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

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Ahshik Kim
Patent Examiner
Art Unit 2876
25 June 10, 2004


MICHAEL G. LEE
SUPERVISORY PATENT EXAMINER
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